

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

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FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

**Civ. Action No. 2:20-cv-02600**

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JESSICA JONES, et al.,

Plaintiffs,

v.

BAIN CAPITAL PRIVATE EQUITY, et al.

Defendants.

**Civ. Action No. 2:20-cv-02892**

**JOINT MOTION FOR ENTRY OF AGREED AMENDMENT TO SCHEDULING  
ORDERS AND TO WITHDRAW PRIOR MOTION**

Plaintiffs and Defendants in the above-captioned cases (collectively, “Parties”), through their undersigned counsel, hereby move the Court for entry of agreed amendments to the expert discovery and class certification deadlines set forth in the Court’s December 16, 2021, Amended Scheduling Order (ECF No. 177)<sup>1</sup> and May 10, 2022, Order Granting Parties’ Joint Motion for Entry of Agreed Amendment to Scheduling Orders (ECF No. 254). In light of the Parties’ agreement on the new expert and class certification deadlines proposed in this joint motion, and

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<sup>1</sup> Unless otherwise noted, all docket references will refer to entries in *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600.

should the Court grant this joint motion, Defendants also move the Court to withdraw their prior motion seeking amendment to those same deadlines.

### **BACKGROUND AND SUPPORT**

On August 11, 2022, Defendants moved the Court for an order amending the current deadlines for expert discovery and class certification briefing. (*Fusion Elite*, ECF No. 285; *Jones*, ECF No. 334.) The motion explained that despite the ongoing exercise of diligence, Defendants' experts required additional time to analyze and prepare responses to the six expert reports served in the *Jones* and *Fusion Elite* cases collectively (four in *Jones* and two in *Fusion Elite*). As set out in that motion, Defendants asserted that good cause and extraordinary circumstances warranted the Court's adoption of revised expert discovery and class certification deadlines.<sup>2</sup> The motion proposed a set of new deadlines that Defendants had agreed to with the *Jones* Plaintiffs. At the time of filing, the *Fusion Elite* Plaintiffs did not agree with the proposed revised deadlines.

Following Defendants' filing of their motion, counsel for Defendants and the *Fusion Elite* Plaintiffs continued meeting and conferring on potential revisions to expert and class discovery deadlines. These discussions resulted in the Parties reaching agreement on revised proposed amended dates, set out as follows:

<b>Event</b>	<b>Current Deadline</b>	<b>Proposed <i>Jones</i> Deadline</b>	<b>Proposed <i>Fusion Elite</i> Deadline</b>
Opposing Expert Reports	August 26, 2022	September 23, 2022	September 23, 2022
Rebuttal Expert Reports	October 21, 2022	December 14, 2022	November 21, 2022

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<sup>2</sup> Defendants incorporate by reference all of their arguments in that motion and the supporting declaration of Matthew S. Mulqueen into this motion. See ECF No. 285, 285-1. Plaintiffs do not endorse any argument made by Defendants in their prior motion except as explicitly set out in this motion.

Expert Witness Depositions Completed	November 11, 2022	January 24, 2023	December 16, 2022
Deadline for Motions for Class Certification and Motions to Exclude Expert Testimony	November 16, 2022	February 10, 2023	January 20, 2023
Deadline for Oppositions to Motions for Class Certification and Motions to Exclude Expert Testimony	January 11, 2023	March 31, 2023	March 3, 2023
Deadline for Replies in Support of Motions Exclude Expert Testimony	February 9, 2023	April 28, 2023	March 28, 2023
Deadline for Plaintiffs' Reply in Support of Motion for Class Certification	February 21, 2023	May 25, 2023	April 17, 2023

The Parties submit that the jointly proposed revised expert and class certification dates are supported by extraordinary circumstances, good cause, and the Parties' professional courtesies in working together to reach agreement. As set out in Defendants' prior motion to amend the existing dates, Defendants assert that they need additional time for their experts to analyze and prepare responses to Plaintiffs' six expert reports (including as a result of a conflicting trial schedule for one of Defendants' experts). Plaintiffs acknowledge that the reports of their experts contain a substantial amount of material. As a matter of professional courtesy, Plaintiffs were willing to work with Defendants on these proposed revised dates to accommodate Defendants' stated need for additional time.

The Parties also submit that the proposed revised deadlines serve the interests of all parties in fully and adequately completing expert discovery and will not result in any undue

prejudice to any party. These proposed deadlines will keep the *Fusion Elite* and *Jones* cases on similar discovery tracks yet are tailored to the needs of each case. The proposed dates will not extend past the current expert discovery deadlines in the related *American Spirit* case. See *American Spirit and Cheer Essentials, Inc., et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02782, at ECF No. 236.<sup>3</sup> Nor will these modest extensions necessarily impact summary judgment or trial, as those dates have not yet been set by the Court.<sup>4</sup>

For the reasons set out above, the Parties jointly request that for good cause shown and under the extraordinary circumstances presented here, the Court issue an order extending the expert discovery and class certification deadlines as set out in this motion. Should the Court grant this motion, Defendants also request that the Court issue an order acknowledging the withdrawal of their previous motion to extend or otherwise denying that motion as moot.

Dated: August 17, 2022

Respectfully submitted,

s/ Matthew S. Mulqueen

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<sup>3</sup> The current deadlines in *American Spirit* include initial expert disclosures on November 18, 2022; opposing expert reports on January 13, 2023; rebuttal expert reports on March 13, 2023; expert witness depositions by April 12, 2023; and motions for class certification and *Daubert* motions on May 16, 2023.

<sup>4</sup> The Court has set a status conference for January 18, 2023, to set the schedule for summary judgment motions, pre-trial orders, and to address other pending issues.

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**CERTIFICATE OF CONSULTATION**

I hereby certify, pursuant Local Rule 7.2(a)(1)(B), that between August 4 and August 16, 2022, I communicated via telephone and email on behalf of Defendants with Eric Cramer and Joseph Saveri, counsel for the *Fusion Elite* and *Jones* Plaintiffs respectively, to discuss the relief sought in this motion. Those discussions led to the parties' agreement on the joint revised expert and class certification dates set out in this joint motion.

s/ Matthew S. Mulqueen